ORIGINAL

APPELLATE CASE No. 18-70156

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NLRB Nos. 31-CA-26240,31-CA-26418, 31-CA-26285
NATIONAL LABOR RELATIONS BOARD

SMOKE HOUSE RESTAURANT, INC.,
Petitioner-Respondent
and
HOTEL EMPLOYEES AND RESTAURANT
EMPLOYEES UNION, LOCAL 11, AFL-CIO
Intervenor

NATIONAL LABOR RELATIONS BOARD
Respondent

PETITION FOR REVIEW
From a Decision of the Board

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Smoke House Restaurant, Inc.

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Attorney for Petitioner.Respondent
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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Petitioner certify that is not such a corporation.

DATED: January 11, 2018.

Kenneth C. Yeager, Esq.
Attorney for Petitioner/Respondent
Smoke House Restaurant, Inc.

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Now Comes Petitioner/Respondent Smoke House Restaurant, Inc., thought its attorney, Kenneth C. Yeager and hereby petition the court for review of the Compliance Order of the National Labor Relations Board issued on December 15, 2017, and served on Respondent on December 28, 2017. PE. 1.

JURISDICTION

The Ninth Circuit has jurisdiction in this matter under 29 U.S.C. § 160 (f) of the National Labor Relations Board Act, Section 10(f) Any party shall petition the court by

filing in such court a written petition praying that the order of the Board be modified or set aside, and in compliance with 28 United States Code, Section 2112.

STATEMENT OF CASE

The compliance hearing in this matter was held on September 25-26, 2012, before Administrative Law Judge John J McCarrick. He rendered his Supplemental Decision on February 26, 2013, which is attached to the Board's order of December 15, 2017. Petitioner's Excerpt Page (EP) 1. Exceptions were timely filed by Respondent, Smoke House Restaurant, Inc. Responds were filed by the General Counsel and charging party. The case was then transferred to the NLRB in Washington, D.C. on February 26, 2013. PE. 17. The Board rendered its decision and order on December 15, 2017.

The aforementioned compliance hearing and review to the Board was held pursuant to the May 12, 2009, order of United States Court of Appeals Ninth Circuit (unpublished) decision *National Labor Relations Board v. JLL Restaurant, Inc. el al.*, Case No. 07-74755, NLRB Nos. 31-CA-26240, 31-CA-26418 and 31-CA-26285. EP 55. In its ruling the Court stated:

> "...we note that the Board... has established a compliance proceeding action to determine the ultimate amount of Smoke House's financial liability under the "make-whole" order, and to align "make-whole" orders with Ninth Circuit law. See *Planned Building Services, Inc.*, 347 NLRB No. 64, 2006 WL 2206975 at *8-9 & n. 23 (citing *Advanced Stretchforming,* 233 F.3d at 1181-83; K*allman v. NLRB,* 640 F.2d 1094, 1102-03 (9th Cir. 1981). In that proceeding, Smoke House may present its arguments regarding whether the expired collective bargaining agreement's provisions regarding medical benefits had already been changed by JLL, whether Smoke House would have agreed to the terms of the previous collective bargaining agreement, and when it would have reached an

agreement on new terms with the union or reached a bargaining impasse. [emphasis added]. Id at 4. PE. 58.

ISSUES AND DEFENSES PETITIONER WAS NOT ALLOWED TO RAISE IN THE COMPLANCE HEARING

The directive from the Ninth Circuit Court of Appeal to the Board was to *fashion its "make whole" orders with Ninth Circuit law," citing Planned Building Services, Inc.,* 347 NLRB No. 64, 2006 WL 2206975 at *8-9 & n. 23 (citing *Advanced Stretchforming,* 233 F.3d at 1181-83; K*allman v. NLRB,* 640 F.2d 1094, 1102-03 (9th Cir. 1981) for guidance was more than dictum. However, the Administrative Law Judge (ALJ) downgraded the court's directive to the status of a footnote. ALJ decision at PE. 10. which was upheld by the Board. The issues that the ALJ should have, but did not allow Respondent to litigate as part of its defenses are listed as issues Respondent request review on, and are as follows:

1. Whether the Administrative Law Judge abused his discretion when he refused to allow Respondent to present evidence that Smoke House Restaurant, Inc., predecessor JLL, Inc., modified/terminated the collective bargaining agreement prior to Respondent (Smoke House Restaurant, Inc.) purchase of the restaurant through the Bankruptcy Court?

2. Whether Smoke House would have agreed to the terms of the previous collective bargaining agreement, and when it would have reached an agreement on new terms with the union, or reached a bargaining impasse?

3. Whether the Administrative Law Judge abused his discretion when he admitted into evidence the (Hearsay) NLRB charts and summary of employees back wages, and medical expenses to prove the truth of the matter assert?

4. Whether the Administrative Law Judge abused his discretion when he admitted into evidence the (Hearsay) medical prescription drugs list of former employee Lynn Pearson to prove the truth of the matter assert?

5. Whether the Administrative Law Judge abused his discretion when he admitted into evidence none expert medical testimony as to a claimant medical disability?

DISCUSSION

1. The ALJ rejection of Respondent's Motion to Introduce Evidence of JLL., Inc., Modification and/or Termination of Collective Bargaining Agreement (CBA) with the charging party HERE, Local 11 was an abuse of discretion, which resulted in the exclusion of any evidence concerning the CBA between the parties.

"There no evidence that neither party gave notice to terminate the collective-bargaining agreement," Administrative law Judge, discision, PE.12. The reason the ALJ could say this is because he would not allow Petitioner to present evidence of notice to terminate the CBA by JLL, Inc. Judge McCarrick, Tr. 209, PE. 27. Though, the ALJ admitted Exhibit L. PE. 65. The ALJ's ruling barring any evidence of impasse prior to May 1, 2003 eviscerated the relevancy of the letter, and as a practical matter prevented Petitioner from presenting in the compliance hearing other admissible evidence related to the issues the Ninth Circuit Court of Appeals (unpublished) decision in National Labor Relations,-26285, which stated Petitioner could litigate in the compliance hearing consistent with *Planned Building Services, Inc.,* 347 NLRB No. 64, 2006 WL 2206975 at 8-9 & n. 23, Advanced Stretchforming, 233 F.3d at 1181-83, and Kallman v. NLRB, 640 F.2d 1094, 1102-03 (9th Cir. 1981). Also see, Judge McCarrick, Tr. 34:1:25, 35:1:9, 46:15:25, 47:1:4. PE. 20, 21, 23, 24.

The charging party, HERE, Local 11, letter to JLL, Inc., date April 2, 2003, clearly and in great detail states that the CBA was **Terminated on September 15, 2002.**

Petitioner Exhibit, L. PE 65. Which was conclusive evidence of the **Termination** of the CBA, or at a minimum the CBA had been **Modified.** Further, the charging party's boycott flyer clearly stated that the union contract had expired. Exhibit M, PE. 68.

Federal Rule of Evidence 401 provides that "[e]vidence is relevant if: (a) it has a tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. Rule Evidence 401.

See, *Padilla v. U.S.,* 58 Fed. Cl. 585, 593 (2003). As in the instant case, *Padilla,* involves a letter; ...*involving changes and modifications in a proposal to a potential agreement between the parties. Given the fact that the letter include the personal knowledge of the author, and could prove the contents of the letter through testimony the document was not hearsay.*

Additionally, the aforementioned letter and boycott flyer were offered against the opposing (charging party). *Federal Rule of Evidence 801(d)* provides: A statement ... is not hearsay .... (2) [if it] is offered against an opposing party and: (A) was made by the party in an individual or representative capacity; (B) is one the party manifested that it adopted or believed to be true; (C) was made by a person whom the party authorized to make a statement on the subject; (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed ; or (E) was made by the party's co-conspirator during and in furtherance of the conspiracy.

All of the elements of a party admission is present in the letter from the charging

party to Respondent and former employer, JLL, Inc. the predecessor to Petitioner Smoke House Restaurant, Inc. Therefore, the ALJ exclusion, (and the Board affirmation of the exclusion) could not be based on hearsay. *U.S. v. D.K.G. Appaloosas, Inc.,* 630 F.Supp. 1540, 1562, 1563 (1986)

Federal Rules of Evidence,Rule 403, provides that relevant evidence can be excluded if its probative value is substantially outweighed by its prejudicial effect. *Relevant evidence is inherently prejudicial, however. United States v. McRae,* 593 F.2d 700, 707 (5th Cir.), rehearing denied, 597 F.2d 283, cert. denied, 444 U.S. 862, 100 S.Ct. 128, 62 L.Ed.2d 83 (1979). *It is only unfairly prejudicial evidence which can be excluded. Evidence is unfairly prejudicial if it has "an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one." Grassi,* 602 F.2d at 1197, quoting Notes of the Advisory Committee on Proposed *Federal Rules of Evidence,* 28 U.S.C.A. Rule 403.

The aforementioned letter and boycott flyer in this matter fits the classic definition of evidence that is against the position of the opposing party is always prejudicial, but it is not unfairly prejudicial, or suggest a decision on an improper basis. Therefore, the charging party's letter to Petitioner's predecessor, and the boycott flyer are not exclusible under *Federal Rules of Evidence,* 28 U.S.C.A. Rule 403. The Administrative Law Judge's exclusion of the letter and boycoff flyer from the charging party was in error, and an abuse of discretion.

2. An Administrative Law Judge cannot modify the judgment/decision of the 9th Circuit Court of Appeals by wholesale restriction of Respondent's right to represent evidence of its predecessor's modification and/or termination of the Collective Bargaining Agreement.

The Administrative Law Judge's denial of Petitioner, Smoke House Restaurant, Inc., every attempt to introduce evidence of the **Termination/Modification** of the CBA effectively modified and changed the judgment/order and decision of the Ninth Circuit Court of Appeals. Contrary to the Board's repeated stated principle that it lacks jurisdiction to modify an order issued by a court of appeals. See *D.L. Baker, Inc.,* 351 N.L.R.B. 515, n. 31 (2007) (explaining that the Board "in the compliance phase ... [was] not at liberty to modify" the back pay period to begin earlier than provided in the "[o]rder that has been enforced by a court of appeals."); *Willis Roof Consulting, Inc.,* 355 N.L.R.B. No. 48, n. 1 (June 17, 2010) (rejecting an employer's attempt to relitigate an issue at the compliance stage because "[t]he Board has no jurisdiction to modify a court-enforced order." *Scepter, Inc. v. N.L.R.B.,* 448 F.3d 388, 391 (2006), nor does a ALJ, or the Board.

Yet, that is exactly what the ALJ did in the compliance hearing. He modified the Ninth Circuit Court of Appeal 2009 decision by excluding all evidence of JLL, Inc., termination and/or modification of the CBA between it and the charging party. In addition, the ALJ decision granting the charging party, Unite HERE Health, and Unite HERE Local II Petition to Revoke Petitioner/Respondent's Subpoena Duces Tecum (PE. 47) was contrary to the May 31, 2009 court decision that Respondent be allowed to

present evidence of whether its predecessor had changed the CBA, or reached an impasse, or whether Respondent would have after bargaining in good faith reach an agreement with the Union, or bargained to an impasse.

3. The Administrative Law Judge ignored the Ninth Circuit Court of Appeal decision and directive issue in its 2009 decision and order.

Notwithstanding the legal principles stated in the instant case by the Ninth Circuit, in *Planned Building Services, Inc.*, and *Kallman v. NLRB*, and contrary to the ALJ statements in his decision that he "*allowed Respondent to present his defenses and evidence under Planned Building Services, Inc., ALJ decision, pg.* 13, fn. 29, PE 12. *the record shows he disallowed any evidence of an impasse prior to May 1, 2003,* (the date Petitioner/Respondent took over the operations of the business, even though Petitioner was held liable for the prior acts of its predecessors). Judge McCarrick, Tr. 6, 34:11:25, 43:6:13, 46:15:25, 47:1:4. PE. 18, 20, 22-24. Spencer Tr. 218:9:25, 219:1:13. PE. 30-31.

The ALJ's claim that he followed the formula/elements in *Planned Building Services, Inc.,* is not supported by the record, who in open court *off-the-record* confessed that he loath the decision. Thought the ruling in P*lanned Building Services, Inc.* to be ludicrous, and that he was not inclined to follow it. Even though, *Planned Building Services, Inc,* follows principles set out in the U.S. Supreme Court case of *San-Tan, Inc. v. NLRB,* 467 U.S. 883, 902 (1984), "*...that the compliance hearing is the appropriate forum for adjudicating what would have occurred had lawful bargaining*

taken place." Planned Building Services, Inc, at 676, fn. 25.

The ALJ's suggests in his findings and conclusions of law that he allowed Respondent to introduce into evidence facts consistent with *Planned Building Services, Inc., is not supported by the facts.* The ALJ did not allow Respondent to present any live testimony of impasse after May 1. 2003. Judge McCarrick, Tr. 6:9:25, 7:1:25, 34:1:25, 35:1:9, 43:6:13, 46:15:25, 47:1:4. PE. 18-19, 20-21, 22-24. PE. 18-27. Spencer, 209:13:19, 217:25, 218:1:25, 219:1:13. PE. 28-31.

4. The Administrative Law Judge abused his discretion by admitting into evidence the Hearsay statements and conclusions of the General Counsel's chart and summary of unit employees and individual employees' medical costs and premium payments.

Danielle Pierce the compliance officer for the NLRB was the only witness to offer testimony and evidence of unit employees' actual premium and medical costs incurred by each employee. However, the data and information used to calculate individual unit employees' actual expenditures were flawed, and boiled down to no more that guessing which plan each unit employee belonged. A determination depending on the plan chosen by the employee could significantly affect the employee's medical expenditures.

The Trust Fund contained four (4) different healthcare plans, and they differed significantly as to coverage, premiums and out of pocket employees costs. Tr. D. Pierce 157:2:8. PE. 36. The compliance officer could not, and did not say for certainty, whether there were no required employee contributions for any of the four plans. Pierce

Tr. 154:14:25. PE. 35.

The compliance officer testified that there were four (4) plans and "I chose the plan that [in my opinion] most favored the employees." D. Pierce Tr. 157, PE. 136. Not only was unreliable it was hearsay See, *In re Sarasota Plaza Associates Ltd. Partnership,* 139 B.R. 259, 262 (1992), *The Debtor introduced voluminous corporate records at the trial to document the transfers of funds, however, none of these corporate records are admissible as competent evidence for the simple reason that the Debtor failed to introduce these records through a person with personal knowledge of these books and records and who had custody and control of these records or otherwise satisfied the requirement of the so-called Shop Book Rule. Fed.R.Evid.* 803(6) as adopted by *Bankruptcy Rule* 9017.

Notwithstanding, and despite the fact that all of the affected unit employees were readily available to provide information as to which healthcare plan they participated in the General Counsel ignored its own NLRB Rules and Regulations, Sec. 102.39, which states in pertinent parts:

> *Any such proceeding shall, so far as practicable, be conducted In accordance with the rules of evidence applicable in the district Courts of the United States...*

Federal Rules of Evidence, Rule 1002 (best evidence rule) requires the original of a document, where the contents of documents are sought to be proved. Here the summary calculations by the compliance officer were flawed, because it did not contain the information as to which plan unit employees were covered under; the differences

between each plan; or the differences in medical costs in each plan.

This is the classic case where the party with the burden of proof failed to produce evidence in its possession. General Counsel offered only speculative evidence of possible losses by unit employees. The United States Supreme Court in *Sure-Tan, Inc, v. NLRB,* 467 U.S. 883, 900 (1984) made it clear that: "*...Board's remedies must compensate for actual injuries suffered by the employees rather that speculative consequences of unfair labor practices.*"

Given the compliance officer's testimony that she, and she along determined which method and information to use in determining unit employees actual losses, while disregarding facts that would accurately reflect unit employees losses, makes General Counsel's calculation meaningless in the determination of the actual medical losses incurred by each unit employee. D. Pierce Tr. 157:1:16, 158:2:13, 153:4:25, 154:1:17, 70:6:25, 71:1:10, 187:13:25, 188:1:8, 189:3:5, PE. 32-33, 34-37, 48-40. The ALJ findings and conclusions, and the Board affirmation were in error and based on speculative, erroneous facts and hearsay.

5. The ALJ erred in the admission of the prescription drug summaries concerning the individual medical expense claims of Lynn Pearson and her daughter.

National Labor Labor Relations Act, Sec. 10(b), 29 U.S.C. § 160 states: Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of

the United States pursuant to section 2072 of title 28, United States Code [section 2072 of title 28].

The ALJ admission of the prescription drug summaries of Pearson and her daughter were errors, and an abuse of discretion because the summaries and/or the documents to support the summaries were not authenticated, were hearsay evidence, and the accuracy of the information was not verified. GC Exhibits 5-6, PE. 69 (note because the medical and prescription summaries are so volumious only a representive sample is included herein), Judge McCarrick, Tr. 106:6:25, 107:1:2. PE. 25-26. *Federal Rules of Evidence, Section* 902(11) requires the certification of documents as to their verification and accuracy by a custodian of records, or another qualified person that complies with a federal statute, or a rule prescribed by the Supreme Court.

In the instant case, Person appeared in court with several hundred pages of paper with numerous medical terms, numbers and medical codes that she could not interpret for the years 2004-2009 allegedly for prescriptions for herself and her adult daughter. GC Exhibits 5-6. PE. 69. The ALJ admitted the bundle of papers as official documents from two drug stores without certification from the custodian of records as required by *FRE, Sections* 902 (11), 1001, 1002. Nor, was the limited testimony of compliance officer Danielle Pierce, or Pearson, or the wrongfully admitted documents were exceptions to any hearsay rule. *Federal Rule of Evidence, Rule,* 801.

See, *Briggs v. Marshall*, 93 F.3d 355,362 (1996), *During the trial, the plaintiffs offered into evidence hospital emergency room records regarding Carnes' examination.*

The records were not authenticated, but plaintiffs' counsel believed he had a stipulation as to their authenticity. He did not, and the district court refused to admit the records. The plaintiffs rightfully argue that those medical records could have helped prove actual damages. However, they present no authority showing that the district court erred in refusing to admit unauthenticated medical records in the absence of a stipulation. Instead, the plaintiffs resort to invective, arguing that the district court's decision "seems to have been designed to ensure that the plaintiffs not be justly compensated for their injuries." The district court did not abuse its discretion in refusing to admit the unauthenticated medical records.

6. The ALJ erred in the admission of a lay witness testimony as medical opinion and diagnosis of an alleged disability.

Lynn Pearson was the only employee to testify about her alleged actual medical losses. Neither Pearson nor General Counsel produced any medical evidence that Pearson's daughter was physically or mentally disabled. Pearson, Tr. 82:7:25, 83:1:25, 84:1:25, 85:1:8. PE. 42-45. The only evidence on the subject matter came from Pearson, who offered conclusory hearsay statements as to her daughter's disability. Pearson Tr. 81-86. PE. 41-46.

The testimony was objected to by Respondent, and should have been excluded under *FRE, Rules* 701, a lay person may not testify as an expert, or give an opinion based on scientific, technical or specialized knowledge. *Federal Rule of Evidence, Rule* 602, a lay witness may only testify as to things within their personal knowledge.

Federal Rule of Evidence, Rule 801, an out of court statement to prove the truth of the matter asserted is hearsay. Repeating expert statements are hearsay statements. However, Pearson did not in her testimony repeat what medical experts may have told her, or for that matter, whether she had ever personally spoken to a doctor, or medical experts about her daughter. Pearson Tr. 81-86. PE. 41-46.

CONCLUSION:

For all of the aforementioned reasons, case law, federal statutes and rules cited above, the Administrative Law Judge's rejection of Respondent's Motion to Introduce Evidence of JLL., Inc., Modification and/or Termination of Collective Bargaining Agreement (CBA) with the charging party HERE, Local 11 was an abuse of discretion, which resulted in the exclusion of any evidence concerning the CBA between the parties prior to May 1, 2003.

The Administrative Law Judge modified the order/decision of the 9th Circuit Court of Appeals by wholesale restriction of Respondent's right to present evidence of its predecessor's modification and/or termination of the Collective Bargaining Agreement.

The Administrative Law Judge ignored the Ninth Circuit Court of Appeal decision and directive issue in its 2009 decision and order.

The Administrative Law Judge abused his discretion by admitting into evidence the Hearsay statements and conclusions of the General Counsel's chart and summary of unit employees and individual employees' medical costs and premium payments.

The Administrative Law Judge erred in the admission of the prescription drug summaries concerning the individual medical expense claims of Lynn Pearson and her daughter.

The Administrative Law Judge erred in the admission of an expert medical opinion and diagnosis as to a union member adult daughter's alleged disability.

RELIEF REQUESTED:

WHEREFORE, Petitioner requests this Honorable Court to reverse the Board's two reimbursement awards and orders.

Date: 1-11-18

Kenneth C. Yeager
Attorney for Petitioner/Respondent
Smoke House Restaurant, Inc.

Form 8.

Certificate of Compliance Pursuant to 9th Circuit Rules 28.1-1(f), 29-2(c)(2) and (3), 32-1, 32-2 or 32-4 for Case Number _____.

Note: This form must be signed by the attorney or unrepresented litigant and attached to the end of the brief.

I certify that (check appropriate option):

[X] This brief complies with the length limits permitted by Ninth Circuit Rule 28.1-1. The brief is words or pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

[X] This brief complies with the length limits permitted by Ninth Circuit Rule 32-1. The brief is words or pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

[X] This brief complies with the length limits permitted by Ninth Circuit Rule 32-2(b). The brief is words or pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable, and is filed by (1) separately represented parties; (2) a party or parties filing a single brief in response to multiple briefs; or (3) a party or parties filing a single brief in response to a longer joint brief filed under Rule 32-2(b). The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

[ ] This brief complies with the longer length limit authorized by court order dated. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). The brief is words or pages, excluding the portions exempted by Fed. R. App. P. 32(f), if

applicable.

[ ] This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 32-2(a) and is words or pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R .App. P. 32(a)(5) and (6).

[X] This brief complies with the length limits set forth at Ninth Circuit Rule 32-4. The brief is words or pages, excluding the portions exempted by Fed. R. App. P.
32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

Date: January 11, 2018

Kenneth C. Yeager
Attorney for Petitioner/Respondent
Smoke House Restaurant, Inc.

CERTIFICATE OF SERVICE

STATE OF CALIFORIA, COUNTY OF LOS ANGELES:

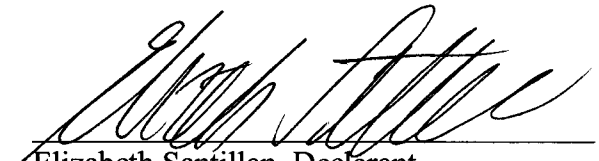
I am employed in the County of Los Angeles, State of California. I am not a party in the within action, and I hereby declare that on January 11, 2018, I served the foregoing documents described as

PETITIONER'S PETITION FOR REVIEW, and PETITIONER'S EXCERPTS

National Labor Relations Board, Office of the Executive Secretary, 1099 14th Street, Washington, D.C., 20570, Kristen Scott, Region Director, Region 31, National Labor Relations Board, at 11150 W. Olympic Blvd., Suite 700, Los Angeles, Ca. 90064-1824, Ellen Greenstone, Esq., Rothner, Segall, Greenstone, 510 South Marengo Ave., Pasadena, Ca. 91101-3115, H.E.R.E. Local 11, 464 S. Lucas Ave., Suite 201, Los Angeles, Ca. 90017, and Henry Willis, Esq., Schwartz, Steinsapir, Dohrmann & Sommers 6300 Wilshire Blvd., Ste. 2000, Los Angeles, Ca. 90048 by email and mail.

I deposit such envelope in the United States Mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Elizabeth Santillan, Declarant